Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2001

LINDA WILLIAMS

Petitioner,

v.

DETECTIVE JAGLOWSKI AND,
LIEUTENANT KELLY,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

When a police officer makes an arrest for an offense which the officer could not reasonably believed had been committed,

May the officer establish qualified immunity in a Section 1983 action by showing that there had been probable cause to arrest for a ''related offense'' without establishing that the ''related offense'' was directed at prohibiting the same type of conduct?

INDEX

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATEMENT 1

REASONS FOR GRANTING THE WRIT 5

CONCLUSION 10

TABLE OF AUTHORITIES

Anderson v. Creighton, 483 U.S. 635 (1987) 5

Avery v. King, 110 F.3d 12 (6th Cir. 1997) 6

Babers v. City of Tallassee, 152 F.Supp.2d 1298 (M.D.Ala. 2001) 6

Bell v. United States, 254 F.2d 82 (D.C.Cir. 1958) 9

Collins v. United States, 289 F.2d 129 (5th Cir. 1961) 9

Gasho v. United States, 39 F.3d 1420 (9th Cir. 1994) 7

Gassner v. City of Garland, Texas, 864 F.2d 394 (5th Cir. 1989) 7

Harlow v. Fitzgerald, 457 U.S. 800, 816 (1982) 5-6

Hunter v. Bryant, 502 U.S. 224 (1991) 5

Mills v. Wainwright, 415 F.2d 787 (5th Cir. 1969) 7

People v. Raby, 40 Ill.2d 392, 240 N.E.2d 595 (1968) 2

Richardson v. Bonds, 860 F.2d 1427 (7th Cir. 1988) 5, 8

Sheely v. Town of Plymouth, 191 F.3d 15 (1st Cir. 1999) 5, 8

Sparing v. Village of Olympia Fields, 266 F.3d 784 (7th Cir. 2001) 8

Trejo v. Perez, 693 F.2d 482 (5th Cir. 1982) 6

United States v. Atkinson, 450 F.2d 835 (5th Cir. 1971) .. 6-7

United States v. Martinez, 465 F.2d 79 (2d Cir. 1972) 6

United States v. Rambo, 789 F.2d 1289 (8th Cir. 1986) 6

Whren v. United States, 517 U.S. 806 (1996) 7

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on October 15, 2001.

OPINIONS BELOW

The decision of the Court of Appeals (App. 1-9) is reported at 269 F.3d 778. The opinions of the district court (App. 13-33, 34-39) are not officially unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254: The judgment of the court of appeals was entered on October 15, 2001. (App. 12.)

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourth Amendment to the Constitution of the United States.

STATEMENT

On April 30, 1996, respondent Jaglowski, a Chicago police detective, was assigned to investigate the death of a man named Essex Adams. Upon arrival at the Adams residence, Jaglowski learned that Essex had died from a shotgun blast to the head.[1] Jaglowski then spoke with Henry Adams, the brother of the deceased, who told Jagloswki that his brother had been dating petitioner, a Chicago police officer named Linda Williams.

Petitioner arrived at the scene while Jaglowski was speaking with Henry Adams. Jaglowski greeted petitioner by asking for her "badge and ID." Petitioner

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1. The death was later determined to be suicide.

told Jaglowski that she did not have a badge.[2] After a further exchange, Jaglowski asked petitioner for her name and address. Petitioner provided this information. Jaglowski then asked petitioner for her date of birth. Petitioner refused to disclose her date of birth and Jaglowski reiterated his request, stating "I'm the police and if you don't tell me your date of birth, I'm going to arrest you." After petitioner again refused to respond, Jaglowski's order was repeated by a police sergeant. (App. 3.) Petitioner refused to reveal her date of birth and she was arrested for "obstructing a peace officer" and transported to a police station.[3]

At the police station, respondent Kelly, a police lieutenant, ordered petitioner to answer Jaglowski's questions. Plaintiff refused to answer further questions and Kelly approved the filing of charges against petitioner of

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2. Petitioner did not have a badge because she had been suspended from the police department in February of 1996. (App. 2.)

3. The Illinois "obstructing a peace officer" statute provides as follows:

> A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity commits a Class A misdemeanor.
> 720 ILCS 5/31-1

The Illinois Supreme Court authoritatively construed this statute in *People v. Raby,* 40 Ill.2d 392, 240 N.E.2d 595 (1968) to require "some physical act or exertion." 40 Ill.2d at 396, 240 N.E.2d at 599.

having obstructed a peace officer.

After the criminal charge was dismissed, petitioner filed this Section 1983 action, contending that she had been unlawfully arrested by respondents Jaglowski and Kelly.

On cross-motions for summary judgment, the district court concluded that there had not been probable cause to arrest plaintiff for obstructing a peace officer.[4] (Appendix 27.) In the view of the district court, however, respondents were entitled to qualified immunity because petitioner, as a suspended police officer, did not have a "clearly established right not to cooperate with an investigating officer's questions regarding her status as a police officer or to provide information necessary to confirm that status." (Appendix 22.)

On appeal, the Seventh Circuit agreed that there had not been probable cause to arrest plaintiff for obstructing a peace officer. (Appendix 6.) The Court of Appeals affirmed on the ground that there had been "arguable probable cause" to arrest "on the closely related charge of failure to follow police rules." (Appendix 7.)

Petitioner argued in the court of appeals that "[o]nly an overly creative advocate could believe that there was a 'close relationship' between arresting

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4. The district court relied on the line of Illinois cases construing the state "obstructing a peace officer" charge to require a physical act of obstruction. (Appendix 21-25.)

plaintiff for obstructing an investigation and arresting plaintiff for refusing to reveal her date of birth.'' (Brief of Appellant, No. 00-2600, 8.) Petitioner also pointed out that respondent Kelly — a police lieutenant with more than forty years of service — had conceded at his deposition that petitioner could not have been arrested ''[f]or just not answering the questions.'' (Kelly Dep. 15.)

The Seventh Circuit rejected petitioner's arguments. The court of appeals did not address respondent Kelly's admission that petitioner had not been subject to arest ''[f]or just not answering the questions'' and did not explain its conclusion that ''[i]f failure to follow police rules is a criminal offense at all (which we discuss in a moment), it is one that is 'closely related' on the present facts to the charge of obstructing an officer.'' (App. 7.) In the view of the Seventh Circuit, there was ''arguable probable cause'' because the law is ''unsettled'' as to whether ''a Chicago police officer's failure to follow police rules could violate a state criminal law.'' (App. 7-8.) The Court of Appeals wrote that the ''critical question'' (App. 7) for the qualified immunity issue was whether ''state law defines the rules violation as a criminal offense.'' Id.

The Court of Appeals answered this question by relying on two provisions of the Chicago Municipal Code: the first authorizes a custodial arrest for any ordinance violation; the second is Section 2-84-290, which provides as follows:

> Any member of the police department who shall neglect or refuse to perform any duty required of him by . . . the rules and regulations of the

> department of police . . . may, in addition to any other penalty or punishment imposed by law, be fined not more than $100.00 for each offense.

The Seventh Circuit noted that there had not been any arrests of police officers for violation of police department rules "other than the ones at issue in *Richardson [v. Bonds,* 860 F.2d 1427 (7th Cir. 1988)] and this case." (App. 8.) Nonetheless, the Court of Appeals upheld qualified immunity because "Chicago police have the authority to arrest fellow officers for this type of a violation of the Municipal Code." Id.

REASONS FOR GRANTING THE WRIT

As applied by the Seventh Circuit, the "related offense" doctrine permits a creative advocate to concoct a qualified immunity defense for a police officer who has knowingly violated the law. The contrary rule, as explained by the First Circuit in *Sheely v. Town of Plymouth,* 191 F.3d 15 (1st Cir. 1999), limits the "related offense" doctrine to offenses which arise from the same conduct and which "share similar elements" or are "directed generally at prohibiting the same type of conduct." Id. at 19. This Court has never addressed the "related offense" doctrine; this case provides an appropriate vehicle in which to resolve the conflict among the circuits on this important issue.

Police officers are entitled to qualified immunity for making an unlawful arrest "if a reasonable officer could have believed that probable cause existed to arrest." *Hunter v. Bryant,* 502 U.S. 224, 228 (1991). The focus is on whether the officer "reasonably but mistakenly conclude[d] that probable cause is present." *Anderson v. Creighton,* 483 U.S. 635, 641 (1987). The officer's subjective intent is irrelevant to qualified immunity. *Harlow*

v. Fitzgerald, 457 U.S. 800, 816 (1982).

Starting with *Trejo v. Perez,* 693 F.2d 482 (5th Cir. 1982), the courts of appeals have permitted a police officer who made an unlawful arrest to obtain qualified immunity by showing that "the conduct that served as the basis for the charge for which there was no probable cause could, in the eyes of a similarly situated reasonable officer, also have served as the basis for a charge for which there was probable cause." Id. at 486.

The "related offense" doctrine is easily applied to situations where a prosecutor decides to file charges for a lesser included offense. *See, e.g., Avery v. King,* 110 F.3d 12, 14 (6th Cir. 1997), (arrest for obstruction under 18 U.S.C. § 1501, arrestee charged with obstruction under 18 U.S.C. §111); *United States v. Rambo,* 789 F.2d 1289, 1294 (8th Cir. 1986) (arrest for disorderly conduct, charged with violation of "undesirable guest" statute, which is "place specific" disorderly conduct); *Babers v. City of Tallassee,* 152 F.Supp.2d 1298 (M.D.Ala. 2001) (arrest for driving under the influence of a controlled substance, charged with driving under the combined influence of alcohol and a controlled substance).

The "related offense" doctrine becomes problematic when it is used to justify a sham arrest. As initially formulated in criminal cases, the "related offense" doctrine permitted the arrestee to introduce evidence about the subjective intent of the arresting officers to show that arrest "was a sham or fraud at the outset, really unrelated to the crime for which probable cause to arrest was actually present to be retroactively validated." *United States v. Martinez,* 465 F.2d 79, 81-82 (2d Cir.

1972), quoting *United States v. Atkinson,* 450 F.2d 835, 838 (5th Cir. 1971). As stated in *Mills v. Wainwright,* 415 F.2d 787 (5th Cir. 1969): "The function of the Court in this situation is to determine if the arrest was merely a sham or fraud wholly unrelated to the crime for which probable cause existed to arrest the individual."

Whren v. United States, 517 U.S. 806 (1996), made plain that constitutional reasonableness does not depend "on the actual motivations of the individual officers involved." 517 U.S. at 813. Thus, the question of whether a person could have been arrested for a "related offense" must be answered without consideration of the subjective intent of the arresting officers.

The test for "related offense" applied by the Seventh Circuit in this case is whether two offenses arise from the same conduct. Under this approach, "obstructing a peace officer" by refusing a police officer's order to reveal one's date of birth (a non-existent offense) is "related" to the ordinance violation of "disobeying a supervisor's order" when the order is given to a police officer to reveal her date of birth. This standard for "related offense" makes relatedness turn on the ingenuity of the police officer's counsel.

Although broad definitions of "related offense" appear in decision in other circuits,[5] the First Circuit

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5. *See, e.g., Gassner v. City of Garland, Texas,* 864 F.2d 394, 400 (5th Cir. 1989) (two offenses are related if they arise from the same conduct); *Gasho v. United States,* 39 F.3d 1420, 1428 n.4 (9th Cir. 1994) (to be "related," offense must involve "the same conduct for which the suspect was arrested").

concluded after a thorough analysis that there are two prongs to the "related offense" doctrine: First, the two offenses must arise from the same conduct, and second, the two offenses must "share similar elements" or be "directed generally at prohibiting the same type of conduct." *Sheely v. Town of Plymouth,* 191 F.3d 15, 19 (1st Cir. 1999), Id. at 19. This second prong of "related offense" minimizes the likelihood that creative counsel will concoct a qualified immunity defense for an officer who violated the civil rights plaintiff's clearly established rights.

The "related offense" rule applied in the Seventh Circuit does not include this second prong. All that is required for "related offenses" in the Seventh Circuit is that the two offenses arise from the same conduct.

At one time, the Seventh Circuit included a subjective dimension in its "related offense" standard, permitting the arrestee to show that the charge offered to justify the arrest was an "*ex post facto* extrapolation." *Richardson v. Bonds,* 860 F.2d 1427, 1431 (7th Cir. 1988) This subjective test was not applied in this case, where respondent Kelly conceded that a police officer would not be arrested for disobeying a supervisor's order and where the Court of Appeals observed that no one had ever been arrested for the purported ordinance violation it deemed to be the "related offense."[6]

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6. The only instances in which the power to arrest for a violation of police department rule had been asserted were this case and an earlier Section 1983 case, *Richardson v. Bonds,* 860 F.2d 1427 (7th Cir. 1988). (App. 8.)

After its decision in this case, the Seventh Circuit reaffirmed its broad ''related offense'' rule in *Sparing v. Village of Olympia Fields,* 266 F.3d 784 (7th Cir. 2001). As in this case, *Sparing* arose from an arrest for obstructing a peace officer. 266 F.3d at 691 n.7. The court of appeals noted that the arrest could not be based on an obstructing charge because there had not been any physical interference; the court of appeals concluded, however, that the officer was entitled to qualified immunity because he could have believed that the arrestee had committed disorderly conduct by having provided false information in response to the officer's questions. Id. at 692.

When a police officer makes an arrest for an offense for which the officer could not reasonably believed had been committed, the officer's ability to argue that he (or she) could have reasonably believed that there had been probable cause to make an arrest for a ''related offense'' should be limited to offenses which are directed at prohibiting the same type of conduct or for offenses that are actually charged by the prosecution. For example, an arrest for robbery would be permissible if the officer only had probable cause to make an arrest for burglary. *Bell v. United States,* 254 F.2d 82 (D.C.Cir. 1958). But an officer should not be permitted to rely on the ''related offense'' rule to argue that there had been probable cause to arrest for robbery when the actual arrest was made for ''investigation of vagrancy.'' *Collins v. United States,* 289 F.2d 129 (5th Cir. 1961).

The ''related offense'' rule as articulated by the First Circuit in *Sheely* strikes a much better balance than the rule currently applied in the Seventh Circuit. The First Circuit's stricter ''related offense'' rule prevents

creative counsel from concocting a qualified immunity defense for an officer who violated the civil rights plaintiff's clearly established rights.

CONCLUSION

It is therefore respectfully submitted that the petition for writ of certiorari should be granted.

January, 2002

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APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 00-2600

LINDA WILLIAMS

Plaintiff-Appellant,

v.

DETECTIVE JAGLOWSKI AND,
LIEUTENANT KELLY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois
No. 97 CV 8850 —**Rebecca R. Pallmeyer** *Judge.*

Argued February 16, 2001—Decided October 15, 2001

Before Easterbrook, Manion, and Diane P. Wood, Circuit Judges.

Wood, Circuit Judge. On April 30, 1996, Essex Adams died in an apparent suicide. Linda Williams, his girlfriend and a suspended Chicago police officer, arrived at the scene shortly after Adams's death. Police at the scene tried to question Williams about the death, but she was evasive and refused to provide even basic identifying information such as her date of birth. Her uncooperative attitude led the police at the scene to arrest her for obstructing a police officer in his official duties. Williams was taken into custody and detained for approximately ten hours. Several weeks later, the charges against Williams were dropped. She then filed this sec. 1983 action against the officers responsible for her arrest and

detention, arguing that they lacked probable cause to arrest her. The district court found that the officers had at least arguable probable cause for the arrest and so were entitled to qualified immunity. The court granted summary judgment for the defendants on this basis, and we affirm.

-I-

In the early morning hours of April 30, 1996, Williams was on the telephone with Adams when she heard a sound at the other end like a gun being fired, followed by silence. She promptly called 911 and reported the incident, and police officers were dispatched to Adams's apartment. When the officers arrived, Adams's brother Henry let them into the apartment, where the officers discovered that Adams had been shot in the head and that a gun was lying on the floor near him. The officers realized that suicide was one possible explanation, but the position of the gun and Henry Adams's statement that Essex had not been depressed made them suspect foul play.

Shortly after the police arrived, Williams showed up at the apartment. Detective Allen Jaglowski, one of the officers investigating the death, knew that someone named Williams had made the original 911 call. Henry Adams had also informed Jaglowski that Essex had been dating a Chicago police officer named Linda Williams. Based on this information, Jaglowski began an interview of Williams and asked her for her badge and police ID. Williams replied that she did not have these items, but she refused to elaborate. In fact, Williams did not have a badge and ID because she was on suspension pending her discharge, but she did not share that information with Jaglowski. Jaglowski also asked Williams for her address. Initially, she refused to provide it, but she eventually relented and told him. Jaglowski next asked Williams for her date of birth. He did so because he regarded "Linda Williams" as a very common name, and he thought that the police department might need more information to

verify Williams's identity and to confirm that she was a police officer. This request was apparently the last straw for Williams: she refused to give her date of birth, stating that she thought it was irrelevant.

After Williams refused to provide her date of birth, Jaglowski brought over a police sergeant, in uniform, who ordered Williams to answer Jaglowski's questions about her identity. Williams refused. Jaglowski consulted with the other officers at the scene and then warned Williams that she would be arrested if she did not provide the information. Williams continued to stonewall, and Jaglowski arrested her on a charge of obstructing a police officer in the performance of his official duties.

When the officers transported Williams to the police station, Lieutenant Ronald Kelly, the watch commander, spoke with Jaglowski and the other officers involved in the investigation concerning the circumstances of Williams's arrest. Lieutenant Kelly questioned Williams and told her that she had to answer the officers' questions concerning her identity. Williams remained adamant that she would not provide her date of birth, although she did give Kelly her star number, which enabled him to confirm that she was a suspended police officer. After consulting with Jaglowski and the other officers, Kelly approved the charges against Williams.

These charges were eventually dropped, but the fact remained that she had been detained for about ten hours before her release. She brought this sec. 1983 action against Detective Jaglowski and Lieutenant Kelly alleging that they lacked probable cause to arrest her.

-II-

Whether police officers had probable cause to arrest a suspect and whether they are entitled to qualified immunity for the arrest are closely related questions, although qualified immunity provides the officers with an "additional layer of

protection against civil liability'' if a reviewing court finds that they did not have probable cause. *Hughes v. Meyer,* 880 F.2d 967, 970 (7th Cir. 1989). In an unlawful arrest case in which the defendants raise qualified immunity as a defense, this court will ''determine if the officer actually had probable cause or, if there was no probable cause, whether a reasonable officer could have mistakenly believed that probable cause existed.'' *Humphrey v. Staszak,* 148 F.3d 719, 725 (7th Cir. 1998). If the officers can establish that they had ''arguable probable cause'' to arrest the plaintiff, then the officers are entitled to qualified immunity, even if a court later determines that they did not actually have probable cause. Id. Accordingly, we will affirm the district court's grant of summary judgment if we find that ''a reasonable police officer in the same circumstances and with the same knowledge . . . as the officer in question could have reasonably believed that probable cause existed in light of well-established law.'' Id.

A.

The defendants' principal argument is that they had at least arguable probable cause to arrest Williams for obstructing a police officer, and thus qualified immunity bars this suit. ''Whether an officer is authorized to make an arrest ordinarily depends, in the first instance, on state law.'' *Michigan v. DeFillippo,* 443 U.S. 31, 36 (1979). Federal law asks only whether the officers had probable cause to believe that the predicate offense, as the state has defined it, has been committed. *Richardson v. Bonds,* 860 F.2d 1427, 1432 n.4 (7th Cir. 1988). Here, the relevant state law is 720 ILCS sec. 5/31-1(a), which defines the offense of obstructing a police officer. It reads in relevant part as follows: ''A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer . . . of any authorized act within his official capacity commits a Class A misdemeanor.'' In interpreting this statute, the Illinois Supreme

Court has held that sec. 5/31-1 "do[es] not proscribe mere argument with a policeman about the validity of an arrest or other police action, but proscribe[s] only some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest or physically aiding a third party to avoid arrest." *People v. Raby,* 240 N.E.2d 595, 599 (Ill. 1968). The defendants do not point to any physical act Williams committed that would satisfy the requirement set out in *Raby.* Moreover, as far as the record reveals, Williams did not engage in any physical act that in any way hindered or impeded Detective Jaglowski. Her only offense was stubbornly to refuse to supply Detective Jaglowski with her date of birth, which would not constitute obstruction as the Illinois Supreme Court defined that offense in *Raby.* Unless the circumstances of this case somehow bring it outside the Raby rule, the defendants did not have even arguable probable cause to arrest Williams for obstructing a police officer.

The defendants argue that Illinois cases since *Raby* have called the *Raby* rule into question. We are not so sure. Our own analysis of the cases the defendants cite along with other recent Illinois decisions indicates that the "physical act" requirement is still very much an element of the crime of obstructing a police officer in Illinois. Since *Raby,* the Illinois Appellate Court has reaffirmed that a "physical act" is an essential element of obstruction under sec. 5/31-1, and has further clarified that, under Raby, "mere silence" in the face of requests for identifying information, or even supplying false information, is not enough to constitute obstruction. *See People v. Ramirez,* 502 N.E.2d 1237, 1239-40 (Ill. App. Ct. 1986) (false information); *People v. Weathington,* 394 N.E.2d 1059, 1061-62 (Ill. App. Ct. 1979) (mere silence). This court, following those cases, has also recognized that "in Illinois the crime of resisting an officer in the performance of his duty requires physical resistance." *Ryan v.*

County of DuPage, 45 F.3d 1090, 1093 (7th Cir. 1995).

The cases that the defendants claim call the Raby holding into question have been distinguished by the Illinois courts. Two involve a defendant refusing to identify himself or giving false information to officers attempting to serve process on the defendant. *People v. Meister*, 682 N.E.2d 306, 309 (Ill. App. Ct. 1997); *Migliore v. County of Winnebago*, 321 N.E.2d 476, 479 (Ill. App. Ct. 1974). The Illinois courts have been clear that these cases involve concerns unique to the service of process context and do not apply to police investigations. *See, e.g., Weathington*, 394 N.E.2d at 1061 (distinguishing *Migliore* on this basis). The final case on which the defendants rely, *People v. Gibbs*, 253 N.E.2d 117, 119-20 (Ill. App. Ct. 1969), involved a defendant who interrupted an encounter between police and third parties, advised the third parties that they did not have to allow the police to search them, and urged the third parties to leave the area. Although this case offers some support for the idea that verbal interference alone could be sufficient to support a finding of obstruction in some cases, the Appellate Court has made it clear that Gibbs involved "unusual facts" and did not undermine the general rule stated in *Raby. Ramirez*, 502 N.E.2d at 1239. In this case, nothing Williams did interfered with the police officer's interactions with any third parties. In light of this well established law, we conclude that a reasonable officer could not have thought the situation fit within the narrow exception Gibbs created to the Raby rule, nor that even arguable probable cause existed to support an arrest of Williams for the offense of obstructing a police officer.

B.

This does not, however, win the day for Williams. The fact that the officers lacked probable cause to arrest her for the precise offense with which she was charged is only one part of our inquiry. Police officers are not required to be legal scholars. This means, among other things, that the

arresting officer's knowledge of facts sufficient to support probable cause is more important to the evaluation of the propriety of an arrest than the officer's understanding of the legal basis for the arrest. *Biddle v. Martin,* 992 F.2d 673, 676 (7th Cir. 1993), citing *Richardson v. Bonds,* 860 F.2d 1427 (7th Cir. 1988). This is why an arrest is justified if the officers had probable cause (or arguable probable cause) to arrest the suspect either for the precise offense the officers cited or for a closely-related offense. Id. In order to rely on a closely-related charge, however, the officers must show that the charge can reasonably be based on the same set of facts that gave rise to the arrest and that the charge offered as justification is one that "would [have recommended] itself to a reasonable police officer acting in good faith" at the time the arrest was made. *Richardson,* 860 F.2d at 1431. The justification for the arrest cannot be an "ex post facto extrapolation [ ] of all crimes that might have been charged on a given set of facts." Id.

Jaglowski and Kelly argue that, even if they lacked probable cause to arrest Williams for obstructing a police officer, they had probable cause, or at least arguable probable cause, to arrest her on the closely-related charge of failure to follow police rules. If failure to follow police rules is a criminal offense at all (which we discuss in a moment), it is one that is "closely related" on the present facts to the charge of obstructing an officer. We turn then to the critical question, which is whether state law defines the rules violation as a criminal offense, *see DeFillippo,* 443 U.S. at 36, or if the police rules are more like a schoolteacher's admonition not to run in the halls— rule, to be sure, but nothing so dignified as a criminal law of the state.

Although it is not entirely clear that a Chicago police officer's failure to follow police rules could violate a state criminal law, it appears likely that this is the case. At the very least, we find that the law is unsettled, which means that

the defendants here had at least arguable probable cause to arrest Williams, and any remaining question about the propriety of the arrest raises only an issue of state law, not a federal constitutional problem. No Illinois court has ever considered this question. Nevertheless, the Chicago Municipal Code (a "state" law for this purpose) specifies that Chicago police officers have the power to arrest for any violation of the Code. Chicago Mun. Code sec. 2-84-230. Another section of the Municipal Code provides:

> Any member of the police department who shall neglect or refuse to perform any duty required of him by . . . the rules and regulations of the department of police . . . may, in addition to any other penalty or punishment imposed by law, be fined not more than $100.00 for each offense.

Id. sec. 2-84-290.

In a case with striking similarities to this one, we held that this provision incorporated the police rules into the Chicago Municipal Code. *See Richardson,* 860 F.2d at 1432 (finding police had arguable probable cause to arrest off-duty officer for refusal to provide his name and star number in violation of police rules). This implied that a violation of the police rules amounts to a violation of the Municipal Code, and an arrest may be made if probable cause exists. Although both parties admit that arrests for failure to follow police rules are highly unusual (in fact, at oral argument the City conceded that it was not aware of any such arrests other than the ones at issue in Richardson and this case), the Chicago Municipal Code has not changed materially since we decided Richardson, and no Illinois case since then has cast doubt on our conclusion that the Chicago police have the authority to arrest fellow officers for this type of a violation of the Municipal Code.

The Supreme Court has recently held that arrests for misdemeanor violations that would be punishable only by a fine do not offend any constitutional principles. *Atwater v. City of Lago Vista,* 121 S. Ct. 1536 (2001). Atwater held that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." 121 S. Ct. at 1557. Municipal Code sec. 2-84-290 describes just such a minor criminal offense. Since a failure to follow police rules is at least potentially a violation of that section of the Municipal Code, Atwater indicates that such an arrest would be constitutional. The only remaining issue is whether the officer had probable cause to believe that Williams had committed that offense in his presence.

In our opinion, he did. At the time of Williams's arrest, Detective Jaglowski had information that Williams was a police officer, and he knew that she had refused to answer his questions about her identity even after having been ordered to do so by a superior officer. These facts formed the basis for the obstruction arrest, and the same facts would support a charge of failure to follow police rules. Kelly testified that Williams's status as a police officer and her failure to follow police rules played at least some role in the decision to charge her, which reassures us that this justification is not an ex post facto excuse for the arrest. Moreover, the undisputed evidence in the record establishes that Williams violated at least one police rule in the presence of the arresting officer. Police Rule 6 prohibits disobedience of a written or oral directive of a superior officer. Williams was ordered by a uniformed sergeant, who was superior to her, to provide her date of birth to Detective Jaglowski, and she refused to obey. Although Kelly and Jaglowski also argue that Williams violated a number of other police rules, we find it unnecessary to determine whether her conduct violated those other rules because the Rule 6 violation is clear. That is enough to

support the district court's conclusion that Williams suffered no deprivation of her federal rights when she was arrested.

Williams makes two final arguments that need not detain us long. First, she argues that, regardless of whether an active police officer could be arrested for violating the police rules, she was on suspension at the time of her arrest, and suspended officers cannot be arrested for violating police rules. This makes little sense, especially on the facts of our case. Williams admits that she did not tell Jaglowski she was on suspension, and, as far as the record reveals, the officers did not discover this information until after Williams was arrested and transported to the station. Because the probable cause analysis focuses on the information that was available to the arresting officer at the time of the arrest, *see Humphrey*, 148 F.3d at 725, the fact that, unbeknownst to the arresting officers, Williams was on suspension at the time of her arrest is irrelevant to our analysis. Moreover, Williams has not pointed to any police rule, municipal ordinance, or case suggesting that the police rules are not fully applicable to suspended officers. In the face of such silence, a reasonable officer could easily believe that, if active officers could be arrested for violating police rules, suspended officers could also be arrested for the same infractions.

Finally, Williams argues that applying Police Rule 6 to require her to answer Jaglowski's questions, under threat of arrest, violates her Fifth Amendment right not to be compelled to incriminate herself. Although it is possible that a rule requiring police officers to answer a superior officer's questions on pain of arrest might in some circumstances run afoul of the Fifth Amendment, we do not believe that Williams's Fifth Amendment rights are implicated here. The Fifth Amendment privilege allows people not to answer official questions if their answers "might incriminate [them] in future criminal proceedings." *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984). It seems highly unlikely that Williams

would have incriminated herself in any way by providing Detective Jaglowski with her birth date, and Williams has not suggested any reason why this information might have proved incriminating. *Cf. United States v. Edwards,* 885 F.2d 377, 385 (7th Cir. 1989) (noting that *Miranda* warnings are not generally required before asking arrestees for "booking information" such as name and address because such information is not likely to evoke an incriminating response). In the circumstances of this case, Williams's Fifth Amendment argument has no merit.

For these reasons, we find that Detective Jaglowski and Lieutenant Kelly had at least arguable probable cause to arrest Williams for violating the Chicago Police Department's rules, and that they are entitled to qualified immunity on that basis. Accordingly, the judgment of the district court is

AFFIRMED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 00-2600

LINDA WILLIAMS

Plaintiff-Appellant,

v.

DETECTIVE JAGLOWSKI AND,
LIEUTENANT KELLY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois
No. 97 CV 8850 —**Rebecca R. Pallmeyer** *Judge.*

[October 15, 2001]

JUDGMENT — ORAL ARGUMENT

Honorable Frank H. Easterbrook, Circuit Judge
Honorable Daniel A Manion, Circuit Judge
Honorable Diane P. Wood, Circuit Judge

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 97 CV 8850

LINDA WILLIAMS

Plaintiff,

v.

DETECTIVE JAGLOWSKI AND,
LIEUTENANT KELLY,

Defendants.

Appeal from the United States District Court
for the Northern District of Illinois

MEMORANDUM OPINION AND ORDER

PALLMEYER, J.

On April 30, 1996, Plaintiff Linda Williams, a suspended police officer, was arrested and charged with obstructing a police officer when she refused to provide police officers investigating a murder with her date of birth. After a brief detention and subsequent dismissal of the charges, Plaintiff filed this lawsuit under 42 U.S.C. §1983 against Detective Allen Jaglowski and Lieutenant Ronald Kelly of the Chicago Police Department. She claims that her arrest and subsequent detention violated her rights under the Fourth and Fifth Amendments.

Both Plaintiff and Defendants have moved for summary judgment. Plaintiff argues that the undisputed facts establish that her arrest violated the Fourth Amendment because it was

not supported by probable cause. She argues, further, that the arrest violated her Fifth Amendment privilege to remain silent. Defendants assert that there was probable cause to arrest Plaintiff for the obstructing a police officer under 720 ILCS 5/31-1. At a minimum, Defendants argue that the facts reflect that they had probable cause to arrest Plaintiff, a suspended police officer, on a closely related charge of violating the Chicago Police Department's Rules and Regulations by impeding the Department's policies and goals, failing to promptly report information regarding the commission of a crime, and failing to identify herself upon request. Finally, Defendants assert that if the court concludes they lacked probable cause to arrest Plaintiff, they are nevertheless entitled to dismissal of individual capacity claims on grounds of qualified immunity.

The court concludes that, as a matter of law, Defendants lacked probable cause to believe that the Plaintiff violated the Illinois obstruction statute. Because the record does not support a conclusion on the applicability of the police rules to a suspended officer, the court does not reach a conclusion on the issue of whether Defendants had probable cause to arrest Plaintiff on the closely related charge that she violated City of Chicago police rules. The court concludes, further, however, that in light of the uncertainty surrounding Plaintiff's obligation to comply with police rules, the arrest did not violate any clearly established statutory or constitutional right. Therefore, Defendants are entitled to summary judgment on the defense of qualified immunity.

FACTS

The court draws the facts of the case exclusively from the parties' Local Rule 12(m) statements and 12(n) replies. Where, as here, both sides move for summary judgment, the court resolves doubts in favor of the non-moving party with respect to each motion.

During the early morning hours of April 30, 1996, Defendant Detective Jaglowski was assigned to investigate the death of Essex Adams at 1861 South Millard in Chicago. (Defendants Kelly and Jaglowski Joint Local Rule 12(M) Statement (hereinafter "Defendants' 12(m)") par. 15.) Arriving at the Adams' residence, Jaglowski met another officer who reported that the victim had died from a shotgun blast to the head and that the victim's brother led police officers into the victim's apartment. (Id. par. 17.) Defendant Jaglowski entered the victim's bedroom, where he observed the body of a male, lying on a couch with a shotgun wound to the head. (Id.) Jaglowski concluded from his initial examination of the body that the individual had been dead for a very short period of time. (Id.) The positioning of a shotgun lying against the couch, in relation to victim's body, raised Jaglowski's suspicions because the gun was not in a typical position for a suicide or accidental death. (Id.) Jaglowski believed there was a possibility of foul play. (Id. par. 20; Jaglowski Dep. at 45.) While performing his preliminary investigation, Jaglowski overheard an officer on the scene state that a person by the name of "Williams" had called the police regarding Adams' death. (Id. par. 19.)

The first witness that Jaglowski interviewed at the crime scene was Henry Adams, Essex Adams's brother who lives on the floor below. (Id. par. 22.) Henry Adams informed Jaglowski that Essex had been working regularly and had not been despondent. (Id.) Henry Adams also stated that Essex had been dating a Chicago police officer named Linda Williams. (Id. par. 23.)

At some point during the interview with Henry Adams, Linda Williams herself arrived at the scene of the investigation. After he had finished interviewing Henry Adams, Jaglowski began to interview Plaintiff. (Id. par. 24.) Jaglowski's initial questions appear to have concerned Plaintiff's status as a Chicago police officer (Id. par. 24);

Plaintiff recalls that Jaglowski immediately asked him, " 'where was my badge and I.D.' " and when she told him she did not have one, Jaglowski "became sarcastic." (Williams Dep. at 102.) Defendants contend that Plaintiff acknowledged that she was a police officer but refused to produce police identification or provide an explanation why she could not. (Defendants' 12(m) pars. 26, 27.)

At the time of the Adams investigation, Plaintiff had been placed on unpaid suspension from the Chicago police department. (Defendants' 12(m) par. 8.) Defendants note that all officers are required by Police Rules and Regulations to produce identification upon request to prove that they are police officers, (Defendants' 12(m) par. 27), to promptly report to the Department any information concerning any crime or unlawful action, (Defendants' 12(m) par. 10(d)), and to assist the department in implementing its goals and policies, (Defendants' 12(m) par. 10(a),(b)). Plaintiff points out, however, that the rules are silent as to their applicability to suspended officers not entitled to carry or possess police identification, (Plaintiff's 12(n) par. 27), and argues that the regulations "appear not to apply to suspended officers," (Plaintiff's 12(n) par. 9). Neither party offers any evidence sufficient to support a finding on the applicability of the Rules and Regulations to suspended officers.

After questioning Plaintiff about her status as a police officer, Jaglowski asked Plaintiff for her name and address, which Plaintiff provided. (Defendants' 12(m) par. 29.) Jaglowski then asked Plaintiff for her date of birth, to which Plaintiff responded, "Date of birth, that's irrelevant." (Id. par. 30.) Jaglowski contends that because the name "Linda Williams" is a common name, he needed a birth date to verify Plaintiff's identity and status as a police officer with the police dispatcher. (Id. par. 31.) Plaintiff argues that her date of birth was unnecessary as there was only one "Linda Williams" who was a suspended Chicago police officer in 1996.

(Plaintiff's 12(n) par. 31.)

Plaintiff stood by her refusal to disclose her date of birth and Jaglowski warned her that she would be placed under arrest if she persisted.[1] (Defendants' 12(m) par. 33.) Williams refused to provide her date of birth and was placed under arrest by Jaglowski and another officer. (Id. par. 35.)

Detective Jaglowski and another officer transported Plaintiff to the Tenth District station, where Defendant Ronald Kelly was on duty as a watch commander. (Id. par. 36.) Defendant Kelly discussed the circumstances surrounding Plaintiff's arrest with Lieutenant Robert Duewerth and Sergeant Robert Cervenka, who were present at the scene of the death investigation, as well as Detective Jaglowski. (Id.) Kelly recalled that the other officers told him "that they had a female who is alleged to have been a police officer and was on suspension and that she refused to answer any questions in a death investigation." (Kelly Dep. at 5.) Sergeant Cervenka told Kelly that he had ordered Plaintiff to answer Detective Jaglowski's questions and that her failure to answer constituted a violation of police regulations. (Defendants'

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1. Defendants assert, "After attempting to interview plaintiff and observing her behavior, Det. Jaglowski believed that if Essex Adams' death was caused by 'foul play,' there was a strong possibility that plaintiff was involved in his death." (Defendants' 12(m) par. 34.) The portion of Jaglowski's deposition that Defendants cite as support, however, reflects Jaglowski's belief in a "possibility that she may have been involved" in "an offense" only after she had been arrested and was in custody. (Jaglowski Dep. at 43.) In any event, Defendants arrested Plaintiff for obstruction; they do not suggest that they ever had probable cause to arrest Plaintiff as a murder suspect.

12(m) par. 39.) Plaintiff admits that Cervenka made these statements but asserts that police rules "could not constitutionally be applied to compel plaintiff to answer questions" and that "this type of interrogation" of Plaintiff violated the Chicago municipal code and the collective bargaining agreement between the City and the police union. (Plaintiff's 12(n) par. 39.) Lt. Kelly spoke directly with Plaintiff and told her she had to answer Jaglowski's questions pertaining to the investigation. (Defendants' 12(m) par. 40.) He confirmed that she was a Chicago police officer and advised her that she would be charged with obstructing a police officer. (Id. par. 41.) Ultimately, Kelly approved a misdemeanor charge of obstructing; he testified that he considered the following facts when he made that decision: (1) Plaintiff had made the 911 call regarding Essex Adams' death; (2) the shotgun used in Adams' death was farther from the body than Detective Jaglowski considered normal for a suicide; (3) Plaintiff arrived at the death scene soon after police officers arrived there; (4) Plaintiff refused to answer any questions posed to her at the crime scene; and (5) Plaintiff, a Chicago police officer, had refused to comply with the direct order of a superior officer. (Id. par. 43.)

Plaintiff asserts that she was held in a detention cell at the Tenth District station for ten hours before being released on bail. (Plaintiff's 12(m) par. 8.) As Defendants point out, however, Plaintiff's testimony reflects that her ten hour "detention" began from the moment she was handcuffed at the crime scene until she was released, not the time she spent in the detention cell. (Defendant's 12(n) par. 8 (citing Williams Dep. at 165).) On September 25, 1996 the charges were dismissed. (Id. par. 10.)

DISCUSSION

Standards for Summary Judgment

The court must grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the parties' affidavits, if any, reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Jenkins v. Keating,* 147 F.3d 577, 583 (7th Cir. 1998); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2458, 2553 (1986). The court construes all facts in the light most favorable to the non-moving party. *Jenkins,* 147 F.3d at 583. To survive a motion for summary judgment, the non-moving party must demonstrate that specific, material facts exist which give rise to a genuine issue. *Celotex Corp.,* 477 U.S. at 324, 106 S.Ct. 2553. When considering cross-motions for summary judgment, the court considers the motions simultaneously. This "Janus-like perspective ... sometimes forces the denial of both motions," but only where there are material facts in dispute. *Buttitta v. City of Chicago,* 803 F.Supp. 213, 217 (N.D.Ill.1992), *aff'd,* 9 F.3d 1198 (7th Cir. 1993).

Probable Cause for Violation of Section 5/31-1

Plaintiff contends that Defendants violated her Fourth and Fifth Amendment rights when they arrested and prosecuted her for her refusal to answer questions. These circumstances, Plaintiff urges, simply do not support probable cause to believe that she was committing an offense. (Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment (hereinafter "Plaintiff's Memorandum") at 1.) Defendants assert, however, that the case law supports the officers' belief that Plaintiff was committing an offense when she refused to provide her birth date to Officer Jaglowski. (Defendants' Memorandum in Support of their Motion for Summary Judgment (hereinafter "Defendants'

Memorandum") at 5). The court concludes that as a matter of law, the officers did not have probable cause to arrest Plaintiff for obstructing a police officer. In light of this determination, the court does not reach the issue of whether the officers' questions violated Plaintiff's Fifth Amendment rights.

For an arrest to be reasonable under the Fourth Amendment, the arresting officer must have probable cause to believe that the suspect committed an offense. *United States v. Nobles,* 69 F.3d 172, 179 (7th Cir. 1995). An arrest is supported by probable cause where "at the moment the decision [to arrest] is made, the facts and circumstances within [the officer's] knowledge and of which she has reasonably trustworthy information would warrant a prudent person in believing that the suspect had committed or was committing an offense." *Qian v. Kautz,* 168 F.3d 949, 953 (7th Cir. 1999). Police officers are not required to be absolutely certain that an offense was committed. *United States v. Foxworth,* 8 F.3d 540, 543 (7th Cir. 1993). The officer need not even believe that it is more likely than not. *United States v. Burrell,* 963 F.2d 976, 986 (7th Cir. 1992). The officer is, however, required to base the arrest on something more than a "mere suspicion." *Foxworth,* 8 F.3d at 543. Therefore, probable cause lies somewhere between a "mere suspicion" and "more likely than not."

Williams was arrested for violating 720 ILCS5/31-1, "Resisting or Obstructing a Peace Officer or Correctional Institution Employee." (hereinafter "Section 5/31-1") The statute provides that, "A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor." To support an arrest for violation of this statute, Defendants must have had information available at the time of the arrest that would lead them to believe that

Plaintiff was obstructing the performance of a peace officer.

Courts struggle to determine exactly what types of actions constitute obstruction in violation of Section 5/31-1. According to the Illinois Supreme Court, obstruction involves (1) a physical act of resistance which (2) has the effect of impeding or hindering, or delaying the performance of an officer's duties. *People v. Raby,* 40 Ill.2d 392, 399, 240 N.E.2d 595, 599 (1968). Plaintiff argues that neither prong of the test is met here.

A. Physical Obstruction

Citing *Raby,* Plaintiff emphasizes that the type of action that will support an obstruction charge must be limited to "physical" rather than "passive" resistance. In *Raby,* the Illinois Supreme Court upheld the conviction under §5/31-1 of a protester who sat down in the middle of an intersection and "went limp" when officers tried to arrest him for disorderly conduct. *Raby,* 40 Ill.2d at 399, 240 N.E.2d at 599. The Supreme Court reasoned that the act of going limp was a physical action which interfered with the officer's duty to arrest the protest. In reaching its conclusion, the court acknowledged that the obstruction statute does not prohibit "mere argument with a policeman about the validity of an arrest." Id. (citing *Landry v. Daley,* 280 F. Supp 938, 959 (N.D.Ill.1968). Rather, §5/31-1 proscribes "only some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest or physically aiding a third party to avoid arrest." Id.

Illinois courts continue to recognize the physical act requirement established in *Raby.* Indeed, as Defendants here acknowledge, "[m]erely arguing with a police officer does not constitute obstructing a police officer, while an act of physical resistance clearly does." (Defendants' Memorandum at 6 (citing *People v. Hilgenberg,* 223 Ill.App.3d 286,

289, 585 N.E.2d 180, 183 (2d Dist.1991), *cert. denied,* 144 Ill.2d 638, 591 N.E.2d 26 (1992). The case law demonstrates, however, that it is often difficult to determine whether a given act may fairly be characterized as "physical" or "passive." *Raby* itself illustrates this difficulty. It is unclear how "going limp" fits into the same category of physical action as "forcefully resisting arrest or aiding a third party to avoid arrest." 40 Ill.2d at 399, 240 N.E.2d at 599.

Courts continued to struggle with this distinction after *Raby.* In *People v. Gibbs,* 115 Ill.App.2d 113, 253 N.E.2d 117 (1st Dist.1969), police officers were in the process of conducting an investigative seizure of several teenagers when the defendant came out of a nearby building and informed the officers that their search violated the teens' constitutional rights. The defendant then apparently advised the teenagers to disregard the officers' orders and follow him into the building. Affirming his conviction, the court held that "the defendant interfered with and obstructed the officers in the performance their duties as completely and as effectively as if he physically touched or otherwise physically interfered with the officers." 115 Ill.App.2d at 119, 253 N.E.2d at 119.

In *People v. Finley,* 49 Ill.App.3d 26, 29, 363 N.E.2d 871, 873 (5th Dist.1977), a police officer pursued and stopped a car involved in a shooting. The officer was in the process of ordering the suspects out of the car when a bystander approached and stood in front of the officer. The officer ordered the citizen to leave. He refused and was arrested and charged with obstructing a police officer. The Illinois appellate court affirmed his conviction, characterizing the citizen's failure to remove himself from the area when ordered by the police officer as physical act of obstruction.

Most recently, in *Ryan v. County of DuPage,* 45 F.3d 1090, 1093 (7th Cir. 1995), the plaintiff wore an air filtration mask into an Illinois courtroom in violation of a courthouse rule. A police officer ordered the plaintiff to remove the

mask, but he refused and was arrested. Affirming the dismissal of plaintiff's Fourth Amendment Claim, the Seventh Circuit concluded that the "physical resistance" requirement was satisfied. "The physical resistance took the form of Ryan's refusing to take off the mask, which left the police with a choice between arresting him and removing the mask forcibly." 45 F.3d at 1093.

Some courts have attempted to resolve the problematic distinction between physical and passive actions by distinguishing instead between verbal and physical resistance. Under this framework, spoken words, or mere argument fall into the passive category. In *People v. Ramirez,* 151 Ill.App.3d 731, 735, 502 N.E.2d 1237, 1239 (5th Dist. 1986), the occupant of a car parked near a crime scene provided a false name in response to police questioning. The appellate court reversed her conviction for obstruction, reasoning that giving a false name to police does not violate the obstruction statute. Similarly, in *People v. Weathington,* 76 Ill.App.3d 173, 176, 394 N.E.2d 1059, 1061 (4th Dist.1979), the physical act requirement was not fulfilled where an arrestee refused to provide a booking officer with his name, address, birth date, place of birth, social security number, occupation, and physical description. Notably, however, the *Weathington* court appeared more concerned with an arrestee's Fifth Amendment right to remain silent after arrest than it did with articulating a definition of "obstruct." The court wanted to preserve an absolute post-arrest right to remain silent. "It would be incongruent to say that one may remain silent and yet must provide 'booking' information." 76 Ill.App.3d at 177, 394 N.E.2d at 1062.

Based on *Ramirez* and *Weathington,* Plaintiff asserts a forceful argument that words spoken or withheld do not satisfy the physical act requirement of obstruction. Defendants insist, however, that an obstruction charge may be based solely on an individual's refusal to provide information

or providing false information and that withholding information from officers in some circumstances satisfies the physical act requirement. They cite *Migliore v. Winnebago,* 24 Ill.App.3d 799, 321 N.E.2d 476 (2d Dist.1974), where police officers went to Nick Migliore's residence to serve a subpoena. Migliore admitted the officers to his home, but when asked to identify himself, responded, "I don't know." Migliore was arrested and charged with violating Section 5/31-1. The appellate court affirmed Migliore's conviction, reasoning that under Illinois law officers are under a legal obligation to serve a subpoena. Identification of the individual being served was essential to the performance of that duty. Accordingly, failure to identify one's self to the officers obstructed of their effective performance. 24 Ill.App.3d at 802, 321 N.E.2d 479.

The facts surrounding the instant case, however, make an extension of *Migliore* problematic. First, unlike officers serving a subpoena, Jaglowski was not under a specific statutory obligation or court direction to take action that required knowledge of Plaintiff's birth date. For example, Defendants have not suggested that Jaglowski was required to make confirmed identifications of possible witnesses at the scene. Furthermore, the circumstances surrounding service of process are very different from criminal investigations. Officers serving subpoenas are not likely to ask more than the individual's name. In criminal investigations, by contrast, detectives are likely to ask questions that extend beyond identity and into possibly incriminating information.

Defendants also raise *People v. Meister,* 289 Ill.App.3d 337, 682 N.E.2d 306 (4th Dist.1997), where the appellate court upheld a conviction for giving false information to officers attempting to serve the defendant's wife with a subpoena. Although factually similar to *Migliore, Meister* is even less applicable to the case at bar. In Meister, the defendant was prosecuted for obstructing service of process under

720 ILCS 5/31-3, a different statute from the "obstruction of performance" provision involved here. Even if the court interpreted "obstruct" in 720 ILCS 5/31-3 in a manner similar to Section 5/31-1, the facts of *Meister* and this case are far from analogous. The defendant in *Meister,* after learning that officers would serve his wife, contacted the officers and told them she was out of town. That same day, however, officers found the wife at home. "[The husband's] conduct was designed to mislead the officers and delay the performance of their duties." 289 Ill.App.3d at 342, 682 N.E.2d at 309.

In contrast to *Meister,* Williams did not provide false information, nor did she refuse to provide information necessary for the officers to carry out a court order, as in Migliore. Neither *Meister* nor *Migliore* appear to address the physical resistance requirement directly, but cases cited by Plaintiff suggest that Plaintiff's conduct did not meet this test. She did not go limp *(Raby),* lead other potential arrestees away *(Gibb),* stand in the officer's way *(Finley),* or refuse to remove equipment *(Ryan).* The court has grave doubts that Plaintiff's conduct constituted physical resistance.

B. Impeding Performance

The physical act requirement, however, is only one prong of a § 5/31-1 inquiry. To constitute obstruction, an action must satisfy the physical act requirement and have the effect of imposing "an obstacle which may impede, hinder, interrupt, prevent or delay the performance of the officer's duties." *Raby,* 40 Ill.2d at 399, 240 N.E.2d at 599. In other words, §5/31-1 proscribes only those physical actions which have the effect of interfering with some lawful duty. In *People v. Hilgenberg,* 223 Ill.App.3d 286, 585 N.E.2d 180 (2d Dist.1998), the defendant, locked inside her place of business, refused to unlock the front door to allow police officers access. Police officers did not display a warrant nor did they

have any reason to believe the defendant had committed any criminal act. The court held that the defendant's failure to open the door was not obstruction because "a failure to respond to an officer's request to open a door or to permit entry to the premises only has legal significance if the request was authorized within his official capacity and the response of the defendant actually impeded an act the officer was authorized to perform." 223 Ill.App.3d at 290, 585 N.E.2d at 184. Similarly, in *People v. Moore,* 286 Ill.App.3d 649, 676 N.E.2d 700 (3d Dist. 1997), an individual fled from an officer who attempted to make an unjustified investigative stop. The court held that where an officer's "performance" is not justified under law, "a person who runs away is not resisting or obstructing an authorized act of the police officer." 286 Ill.App.3d at 654, 676 N.E.2d at 704.

As noted earlier, the court has grave doubts about whether Ms. Williams engaged in any physical resistance. Even if the court were to conclude that Williams' refusal to give her date of birth satisfied §5/31-1's physical act requirement, the court would be required to determine whether Jaglowski had a lawful duty to obtain Plaintiff's date of birth and that Plaintiff's refusal to respond impeded that duty. There is little question that Jaglowski was engaged in performance of a lawful duty. He was charged with investigating the death of Essex Adams. As a part of that investigation, Jaglowski certainly needed to identify the possible witnesses at the scene of the crime, gathering enough information to contact them at a later time. In this court's view, however, Jaglowski is entitled to summary judgment on the probable cause issue only if he demonstrates that Plaintiff's reactions to Jaglowski's questions interfered with the performance of that duty.

In response to Jaglowski's initial questions, Williams willingly provided both her full name and address. (Defendants' 12(m) par. 29.) Furthermore, Henry Adams identified

Plaintiff as the victim's girlfriend, a Chicago police officer. (Defendants' 12(m) pars. 22, 23.) The court has difficulty understanding that this information was insufficient to enable Jaglowski to contact Williams at a later time, and Defendants themselves have not explained how Plaintiff's refusal to provide her date of birth would have made it more difficult for Jaglowski to contact her. In this court's view, no prudent officer would conclude that a possible witness known to be a police officer obstructs his investigation where she provides both her name and address, but refuses to provide her date of birth. Accordingly, the court concludes that Defendants lacked probable cause to arrest Plaintiff for a violation of 720 ILCS 5/31- 1. Defendant's motion for summary judgment on this issue is denied, and Plaintiff's motion for partial summary judgment is granted in part.

Probable Cause on a Closely Related Charge

Defendants correctly observe that an arrest without probable cause does not violate the arrestee's rights so long as probable cause existed on a closely related charge. *Biddle v. Martin,* 992 F.2d 673, 676 (7th Cir. 1993). Even if probable cause was lacking with respect to 720 ILCS 5/31-1, Defendants assert, they nevertheless had probable cause to arrest Plaintiff for violating City of Chicago Department of Police Rules and Regulations.

The police rules were created by the Police Department and incorporated into the Chicago Municipal Code. Chicago Municipal Code §2-84-220. Therefore, a violation of any provision of the police rules is a violation of the Municipal Code. Under Illinois law, a police officer is permitted to make an arrest for code violations. *Richardson v. Bonds,* 860 F.2d 1427, 1432 (7th Cir. 1988) (citing *People v. Edge,* 406 Ill. 490, 497, 94 N.E.2d 359, 363 (1950).)

Defendants contend that by not providing Detective Jaglowski with her date of birth, Plaintiff violated various

provisions of the police rules. (Defendants' Reply in Further Support of their Motion for Summary Judgment (hereinafter "Defendant's Reply") at 7.) First, officers are prohibited from engaging in "any conduct which impedes the Department's efforts to achieve its policy and goals." Chicago, Ill., Rules and Regulations of the Police Department, §5, Rule 2 (1975) ("Rules"). Second, officers must "promote the Department's efforts to implement its policy or goals." Id. 3. Third, officers are required to "report promptly to the Department any information concerning any crime or other unlawful action." Id.

With respect to Rules 2 and 3, the Defendants do not make clear exactly what policy or goal the Plaintiff either impeded or failed to promote. The court has already concluded that Plaintiff's name and address were sufficient contact information to allow Jaglowski to contact her at a later time. For the reasons explained earlier, the court has difficulty understanding how Plaintiff's refusal to provide her birth date impeded Jaglowski's investigation. Nor do Defendants provide evidence that Plaintiff failed to promptly report information concerning the crime; to the contrary it is undisputed Plaintiff made the 911 call regarding Adams' death after she heard a gunshot over the telephone. (Defendant's 12(n)(3)(b), pars. 12, 14.) Beyond that, Defendants do not allege that there was any other information that Plaintiff could have reported.

Defendants also contend, however, Plaintiff violated two other police rules. Rule 6 prohibits disobedience of any written or oral directive. Defendants contend Plaintiff violated this rule when she refused Sergeant Cervenka's order to answer Defendant Jaglowski's questions. (Id. pars. 39, 40.) In addition, Defendants assert, Plaintiff was required to provide Detective Jaglowski with sufficient information to confirm her status as a police officer. (Defendant's 12(m) par. 27.) Police Rule 37 provides that a police officer is

required "whether on or off duty, to correctly identify himself by giving his name, rank and star number when so requested by other members of the Department or by a private citizen." RULES §5, Rule 37. The Seventh Circuit examined Rule 37 in *Richardson v. Bonds,* 860 F.2d 1427 (7th Cir. 1988). There, officers responded to a report that two off-duty police officers were consuming or trafficking cocaine in a local tavern. On entering the tavern, the investigating officer recognized one individual and asked the suspect for police identification. The Court of Appeals upheld the validity of the suspect's arrest for refusal to respond, stating that even though the applicability of the rule to off-duty police officers was unclear, "a reasonably competent officer would be cognizant of, and should seek to comply with, the mandatory identification requirement." *Richardson,* 860 F.2d at 1431. Relying on *Richardson,* Defendants argue that Plaintiff's failure to produce her police badge or sufficient information to confirm her status as a police officer constituted a basis for her arrest.

Plaintiff devotes little attention to the question of whether her conduct violated police rules. She argues, instead, that she was not required to comply with either Rule 6 or Rule 37 because, at the time of her arrest, she was not merely off-duty but had been suspended from the police force. (Plaintiff's 12(n) par. 27.) When an officer is placed on suspension, Plaintiff asserts, she is not entitled to carry police identification; indeed, Plaintiff argues that if a suspended police officer presents police identification she subjects herself to a charge of "false impersonation" of an officer. (Id.) Perhaps not surprisingly, although the Rules reflect that off duty officers are required to comply, neither side has offered any authority concerning the obligations of suspended officers. The inferences in favor of each party with respect to the opponent's motion for summary judgment are conflicting. The court is unprepared at this stage to conclude as a matter of law that Defendant officers did or did

not have probable cause to believe that Plaintiff's failure to provide identification information violated the police rules.

Qualified Immunity

The uncertainty surrounding this issue suggests, however, that Defendants are nevertheless entitled to summary judgment on qualified immunity grounds. The doctrine of qualified immunity is designed to shield government officials with discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kompare v. Stein,* 801 F.2d 883, 886 (7th Cir. 1986) (citing *Harlow v. Fitzgerald,* 457 U.S. 808, 818, 102 S.Ct. 2727, 2738 (1982)). Police officers fall under the category of protected officials where the challenged conduct relates to an arrest. *Kompare,* 801 F.2d at 887.

The standard for granting qualified immunity on summary judgment is objective. The court examines whether the state of the law at the time of the arrest was such that a reasonable person would have known her actions were unconstitutional. Id.; *see also Matalby v. Winston,* 36 F.3d 548, 555 (7th Cir. 1994) ("If officers of reasonable competence could disagree on this issue, immunity should be recognized.").

For reasons explained earlier, the court has concluded that the circumstances of this case did not support a finding of probable cause to believe that Plaintiff's refusal to answer questions constituted an obstruction of justice. The court notes, further, that it was well-established in 1996 that an obstruction offense required physical resistance and interference with the officer's duty, elements not present here.

The parties' qualified immunity discussion focuses on Plaintiff's Fifth Amendment right to refuse to answer questions, rather than her Fourth Amendment right to be arrested only on probable cause. Had the court reached the Fifth

Amendment issue and concluded that the arrest did violate Plaintiff's right against self-incrimination, the qualified immunity issue would be more complicated than Plaintiff suggests. She cites *Moya v. United States,* 761 F.2d 322, 355 (7th Cir. 1985), where the Seventh Circuit held that a suspect's refusal to present identification could not constitute probable cause that he was in possession of narcotics. As Defendants note, however, this case differs from Moya in that Plaintiff's very act of refusing to provide her date of birth and police badge was the purported offense, not the basis of probable cause for another.

Whether an individual has a Fifth Amendment right to decline questions may turn on the degree of suspicion harbored by the officer. In *Tom v. Voida,* 963 F.2d 952, 959 (7th Cir. 1992), the Seventh Circuit considered, without resolving, the issue of whether an officer could use a suspect's refusal to cooperate in an investigative stop supported by reasonable suspicion, as a basis for establishing probable cause. The court posed for itself the question, "Do citizens have a right to refuse to respond to questions posed during investigative stops based merely on reasonable suspicion?" Answering the question with either a yes or no created problems, the court observed; a "yes" arguably emasculates the utility of a Terry stop, while a "no" answer arguably grants too great a power to law enforcement. The Supreme Court has addressed only the issue of compelling information absent reasonable suspicion. In *Brown v. Texas,* 443 U.S. 47, 99 S.Ct. 2637 (1979), the Court held that a suspect's mere presence in an alley could not have formed the basis for a reasonable suspicion that he was engaged in a criminal offense and that there was no basis for arresting him for failure to provide identification. 443 U .S. at 51, 52, 99 S.Ct. at 2641. The Court expressly declined to consider the constitutionality of requiring identification in a lawful stop. Id. at 53, 99 S.Ct. at 2641. Similarly, in *Florida v. Bostick,* 501 U.S. 429, 111 S.Ct. 2382 (1991), the Court considered

whether questions posed to random bus passengers by police officers violated the Fourth Amendment. The Court held that police officers may ask questions of any individual, but "when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual—as long as the police do not convey a message that compliance with their requests is required." 501 U.S. at 435, 111 S.Ct. at 2386 (citations omitted).

Brown and *Bostick*, however, both involved individuals who were randomly stopped and questioned. Here, in contrast, Williams was not the subject of a random stop. Jaglowski was concerned about the possibility of foul play, he was aware that Plaintiff was romantically involved with the deceased and made the 911 call shortly after his death, and he believed Williams was evasive in responding to questions regarding her status as a police officer. These facts are arguably sufficient to warrant an investigative stop, though they fall short of probable cause. Defendants have a colorable argument that the law is uncertain whether reasonable suspicion is sufficient to compel information from a suspect.

In this case, even if Jaglowski's questioning of Plaintiff was not supported by reasonable suspicion, it is not obvious that Plaintiff had a clearly established right not to respond. As discussed above, Plaintiff has not challenged Defendants' argument that Chicago police officers are duty-bound to present identification or provide their name, rank, and star number. Williams apparently admitted that she was a Chicago police officer, but when asked to produce identification responded only that she did not have any. (Plaintiff's 12(n) par. 25.) In *Richardson v. Bonds*, 860 F.2d 1427 (7th Cir. 1988), the court upheld qualified immunity for police officers who arrested an off-duty officer who refused to produce identification. The court reasoned that while a private citizen may have the right to cooperate with police, "we have little doubt that a person gives up certain rights on joining a police

force, such as the right to be stubbornly non-cooperative in the face of a legitimate request for identification." *Richardson,* 860 F.2d at 1432. The court concluded that an off-duty police officer did not have a clearly established right to refuse to present identification. Similarly, this court could not find any authority suggesting that a suspended officer has a clearly established right not to cooperate with an investigating officer's questions regarding her status as a police officer or to provide information necessary to confirm that status.

Defendants' motion for summary judgment with respect to qualified immunity is granted.

CONCLUSION

Defendants lacked probable cause to arrest Plaintiff for obstruction. Whether they had probable cause to arrest her for the closely-related charge of violating police rules is uncertain. Even if a lay suspect has a Fifth Amendment privilege to refuse to answer the officers' questions, a police officer does not have such a privilege to violate police rules, and the record does not permit a determination whether a suspended officer, such as Plaintiff, was bound to comply with such rules. The court concludes, therefore, that Defendants are shielded from individual liability by qualified immunity. Accordingly, Plaintiff's motion for partial summary judgment is granted in part and denied in part; Defendants' motion for summary judgment is granted. Judgment is entered in favor of Defendants and against Plaintiff.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 97 CV 8850

LINDA WILLIAMS

Plaintiff,

v.

DETECTIVE JAGLOWSKI AND,
LIEUTENANT KELLY,

Defendants.

Appeal from the United States District Court
for the Northern District of Illinois

MEMORANDUM OPINION AND ORDER

PALLMEYER, J.

This case involves a suspended police officer, Plaintiff Linda Williams, who was arrested and charged with obstructing the performance of a peace officer. The arrest was made when Plaintiff refused to provide a police officer with her date of birth during a homicide investigation and also refused to produce police identification in violation of Chicago Police Department Rule 37 ("Rule 37").[1] Plaintiff brought suit

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1. The facts of the case are set forth in detail in the court's decision upon cross-motions for summary judgment, and need not be repeated here. *See Williams v. Jaglowski,* No. 97 C 8850, 1999 WL 965866, at *1 (N.D.Ill. Sept. 29, 1999).

under 42 U.S.C. §1983 against Detective Allen Jaglowski and Lieutenant Ronald Kelly ("Defendants") of the Chicago Police Department ("CPD"), claiming that her arrest and detention violated her Fourth Amendment right against unreasonable seizures and her Fifth Amendment privilege to remain silent.

Upon cross-motions for summary judgment, this court held that Defendants lacked probable cause to believe that Plaintiff had violated the Illinois obstruction statute. *See Williams v. Jaglowski,* No. 97 C 8850, 1999 WL 965866, at *8 (N.D.Ill. Sept. 29, 1999). On the closely related charge of violating police department rules by failing to identify herself upon request, the court decline to decided whether Defendants had probable cause to arrest Plaintiff, noting that the record did not support a conclusion on the applicability of the police rules to a suspended officer. See id. at *10. Ultimately, however, the court granted Defendants' motion for summary judgment on the defense of qualified immunity, concluding that in light of the uncertainty surrounding the obligation of a suspended officer to comply with police rules, the arrest did not violate any clearly established statutory or constitutional right. See id. at *12.

Pursuant to Federal Rule of Civil Procedure 59, Plaintiff now moves for reconsideration of the September 29, 1999 order granting judgment in Defendants' favor. Specifically, Plaintiff argues that reconsideration is warranted on three bases: (1) the court failed to consider the subjective belief of the arresting officer in making its qualified immunity determination; (2) the court misapprehended the requirements of Police Rule 37; and (3) the court adopted an overly broad reading of the holding in *Richardson v. Bonds,* 860 F.2d 1427 (7th Cir. 1988) to conclude that Plaintiff had a clearly established right not to respond to police questioning during an investigation.

Motions for reconsideration serve a narrow function and must be supported by a showing of extraordinary circumstances justifying relief from judgment. *See Commodity Trend Serv., Inc. v. Commodity Futures Trading Comm'n*, 149 F.3d 679, 684 (7th Cir. 1998). As such, motions for reconsideration are designed to correct manifest errors of law or fact or to present newly discovered evidence. *See Publishers Resource, Inc. v. Walker-Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985). Accordingly, a motion for reconsideration is an "improper vehicle to introduce evidence previously available or to tender new legal theories." *See Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d 398, 400 (7th Cir. 1986). With these principles in mind, the court will consider each of Plaintiffs' arguments in turn.

Plaintiff argues that Defendants' subjective understanding of the legal justification for Plaintiff's arrest controls the qualified immunity inquiry. Specifically, Plaintiff points to the deposition testimony of Defendant Kelly during which Kelly stated that Plaintiff could not have been arrested "[f]or just not answering the questions[.]" (Kelly Dep., at 15.) Plaintiff further notes that Jaglowski testified that his decision to arrest Plaintiff had nothing to do with police rule violations, and that instead he believed she was obstructing his investigation because "she refused to answer questions that were material to the investigation." (Jaglowski Dep., at 59.) Plaintiff argues, that this testimony shows that arresting Plaintiff for violating a police rule is not a "rationale that would recommend itself to a to a reasonable police officer acting in good faith." Because Defendants did not actually believe that the police rules provided a justification to arrest her, Plaintiff argues, they are not entitled to immunity.

Plaintiff misunderstands the doctrine of qualified immunity, as the standard for determining its application is an objective one. Indeed, the U.S. Supreme Court has explicitly stated that "[e]vidence concerning the defendant's

subjective intent is simply irrelevant to that defense." *See Crawford-El v. Britton,* 523 U.S. 574, 588 (1998). In the context of an improper arrest, the determination of whether the challenged conduct was in violation of clearly established constitutional rights turns on the objective inquiry of whether a reasonable police officer, in light of clearly established law and with the facts known to him at the time, could have mistakenly believed that probable cause to arrest existed. *See Humphrey v. Staszak,* 148 F.3d 719, 727 (7th Cir. 1998). Plaintiff's assertion that the subjective beliefs of Defendants affect their entitlement to immunity is legally erroneous. The court has already determined that Defendants' actions were objectively reasonable either (1) because the law is uncertain about whether reasonable suspicion-here based on the facts that Plaintiff was romantically involved with the deceased, made the 911 call shortly after his death, and was evasive in responding to questions-is sufficient to compel information from a suspect; or (2) because, even if Jaglowski's questioning of Plaintiff was not supported by reasonable suspicion, "it is not obvious that Plaintiff had a clearly established right not to respond." *See Williams,* 1999 WL 965866, at *11. For this reason, the court denies Plaintiff's motion for reconsideration on this basis.

Next, Plaintiff argues that the court misunderstood Rule 37 to require "production of identification" rather than its actual requirement that an officer "correctly identify himself by giving his name, rank and star number when so required by other members of the Department[.]" Therefore, Plaintiff argues, because "nothing in Rule 37 requires a police officer to produce his or her identication [sic]," the court improperly relied on a violation of a police rule as a basis for Plaintiff's arrest. This argument is an exercise in semantics and does not persuade the court. The undisputed facts establish that Plaintiff was evasive about her status with the CPD, and that she refused to produce police identification, including her "star number." Reasonably assuming Plaintiff was an active

police officer, Jaglowski could have believed that her failure to identify herself as required in Rule 37 was a violation of her obligations under that Rule. Because such belief, in the absence of a clearly established right on the part of Plaintiff not to respond, was objectively reasonable, Defendants are entitled to qualified immunity.

Finally, Plaintiff argues that the holding of *Richardson v. Bonds,* 860 F.2d 1427 (7th Cir. 1988) should be limited to cases involving firearms. *Richardson* involved the arrest of an armed off-duty police officer who failed to respond to a request for police identification during the investigation of illegal drug consumption. See id. at 1428-29. In arguing that he was entitled to qualified immunity, the arresting officer offered two rationales for Richardson's arrest: (1) that a reasonably competent officer would be aware that a civilian is prohibited from carrying a concealed firearm; and (2) that a reasonably competent officer would have known of police rules requiring an officer to identify himself in response to inquiries by fellow police officers. See id. at 1431. After analyzing the failure to identify rationale, the court granted summary judgment in favor of the arresting officer on the qualified immunity defense, concluding that a reasonably competent officer could have relied on the violation of the police rules to make an arrest, even though the law was not clear as to the application of Rule 37 to off-duty officers. See id. at 1434.

Nothing in the *Richardson* decision suggests that the court limited its holding to cases involving armed officers. Indeed, that *Richardson* was carrying a firearm appears not to have figured at all into the court's qualified immunity analysis. Instead, the court concluded that, "at the time of the arrest, it was not clearly established that an off-duty police officer could not be arrested for failing to identify himself, as required by police department regulation." See id. at 1433. This court applied that holding to the facts presented

here and concluded that, likewise, it does not appear that a "suspended officer has a clearly established right not to cooperate with an investigating officer's questions regarding her status as a police officer or to provide information necessary to confirm that status." *See Williams,* 1999 WL 965866, at *11.

Accordingly, Plaintiff's motion for reconsideration (Doc. 28-1) is denied.